(2)

Supreme Court, U.S.
FILED
OCT 27 2006
OFFICE OF THE CLERK

No. 06-92

IN THE

Supreme Court of the United States

DAVID EUGENE EDWARDS AND
JAMES EUGENE EDWARDS,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR REHEARING FOR WRIT OF CERTIORARI

David Eugene Edwards
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CERTIFICATION OF GOOD FAITH

Petitioners David Eugene Edwards and James Eugene Edwards hereby certify that this Petition for Rehearing is made in good faith and not for delay and is restricted to substantial grounds not previously presented and intervening circumstances of a substantial or controlling effect.

/s/ David Eugene Edwards
David Eugene Edwards

/s/ James Eugene Edwards
James Eugene Edwards

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1

SUBSTANTIAL GROUNDS

NOT PREVIOUSLY PRESENTED

Petitioners raised an issue of grave error in their Petition for Writ of Certiorari which has kept all arguments raised by Petitioners from being heard in any court, including this one, since May 7, 2002, when Petitioners' original answer to complaint was struck by the trial court. This Court's clerk has acknowledged the importance of the date of service by docketing the "filed" date as May 20, 2006 (date Petitioners placed document with third party carrier) and not the received date of May 23, 2006. See letters at App. 1-3. Pursuant to the United States Supreme Court Rule 29(2), the standard for docketed filing dates is the date it is placed with the United States Postal Service or other carrier for delivery within 3 days Petitioners respectfully request the honorable judges of this Court review this issue again.

II

INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT

On or about August 1, 2006, Petitioners discovered the Receiver appointed by the trial court failed to give bond as required by the Court and mandated by Congress as a condition precedent to the Receiver enjoying jurisdiction in a different district.

Receiver's bond has never been given and with full knowledge of duty and failure to comply with the Court's orders and laws, the Receiver, and possibly the trial court, continues to work a fraud by asserting as recently as September 26, 2006, in "Order Re-Appointing Temporary Receiver", CR 1315[1] that bond was previously filed with the Clerk of the Court. "Fraud vitiates the most solemn of contract, documents

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[1] CR – Court Record in trial court, United States District Court, Northern District of Texas, Dallas Division (USDC NDT), Case Number 3:02-CV-0605.

and even judgments." *U.S. v. Throckmorton*, 98 U.S. 61, 65 and *Claredon v. Thompson,* 523 U.S. 538 (1988)

The Order Appointing Temporary Receiver (OATR) in case number 3:02-CV-0605, CR 8, p. 2, para. 2 evidences that the first order of the court is to appointed Receiver, Lawrence J. Warfield, to file a bond with the Clerk of the court:

> "The Receiver shall file with the Clerk of this Court a bond in the sum of $10,000, without need for sureties approved by the Court, to assure his conscientious performance of the duties and responsibilities imposed by this Order."

1. The Receiver failed to give bond to the Court and at no time has filed a bond with the Clerk of the Court as ordered (OATR CR 8, page 2, paragraph 2).

Evidence: (A) Letter dated September 7, 2006 from Leigh Lyon, Division Manager, USDC NDT Clerk's office, letter attached hereto at App. 4-5; and (B) testimony[2], under

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[2] Transcripts of September 12, 2006 hearing have not been obtained as of this date. Acquiring transcripts from Court Reporter, Joe Belton, has been a challenge for Petitioners in the past.

oath on September 12, 2006 at a hearing before Judge Jerry Buchmeyer, of Lawrence J. Warfield, Receiver, that he had not personally filed said bond with the Clerk of the court, and which Kelly M. Crawford, attorney for Receiver, stipulated no bond was filed with the Clerk of the court; and (C) affidavit of Cynthia Faye Setser, who reviewed the record with clerks, finding no original bond, and only an alleged copy of Receiver Bond filed two years after appointment, March 24, 2004, as CR 493. Affidavit attached hereto at App. 6-7.

2. The Receiver failed to conscientiously perform his duties and responsibilities imposed by the Order by violating Constitutional rights and committing criminal acts.

On March 25, 2002, the Securities and Exchange Commission filed its Complaint in USDC NDT as Case No. 3:02-CV-0605; Lawrence J. Warfield was appointed Receiver at approximately 2:15 PM CST March 25, 2002. Mr. Warfield was in Tacoma, Washington on March 25, 2002 at 2:00 PM

PST seizing personal and real property of defendants in Case No. 3:02-CV-0605, on the authority of the OATR.

Evidence: September 12, 2006 hearing[3] Lawrence J. Warfield under oath testified: (A) on March 25, 2002 he personally entered the offices of Resource Development International, seized the books, records and computers thereof; and (B) he did not have a search warrant which was demanded, and that he acted on the authority of OATR; and (C) and Receiver's Bond which he allegedly signed on March 25, 2002, was "probably a facsimile copy".

U.S. Marshals first served summons, complaint and OATR on defendants March 27, 2002, CR 22 and 28. The USDC did not have jurisdiction over the lawsuit until service of process was effected, March 27, 2002 at the earliest. Service of process marks the start of court's jurisdiction over the lawsuit, *Hunnsinger v. Gateway Management,* 169 FRD 152 (1996).

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[3] Transcripts for this hearing have not been obtained as of this date.

The Court could not have taken possession of any of the defendant's assets until the earliest, April 11, 2002, Temporary Restraining Order expiration and Preliminary Injunction hearing; and therefore the Court did not have possession to vest in Receiver on March 25, 2002. Defendants received no notice prior to Receiver entering their homes and office and seizing their real and personal property.

> "No judgment of the court is due process of law, if rendered without jurisdiction in the court, or notice to the party." *Scott v. McNeal,* 154 U.S. 34, 46, 38 L.Ed 896, 14 S.Ct. Rep. 1108.

Receiver could not have secured a bond and filed with the Court in Dallas, Texas while in Tacoma, Washington prior to entering private homes and offices within two hours of his appointment.

3. The Receiver violated federal law.

Federal law requires a Receiver to give bond as a condition precedent to being vested with jurisdiction, control of property situated in a different district and right to take

possession thereof. 28 U.S.C. § 754; The Receiver never enjoyed jurisdiction, control or right to take possession of Receivership assets in a different district. Receiver, as agent of the court, enjoys only such authority as possessed by the court.

> "...that power exists precisely because the court has taken control over the property placed in receivership." *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 291 (CA D.C. 1996).

The Receiver's failure to give bond as required by the court is estoppel to Receiver being vested with jurisdiction, control and right to take possession of property situated in a different district, 28 U.S.C. § 754:

> "A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, **upon giving bond as required by the court**, be vested with complete jurisdiction and control of all such property with the right to take possession thereof." 28 U.S.C. § 754 (Bold emphasis added.)

> "When a bond is executed to the United States by a fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are

> interested, a person aggrieved by a breach of the condition may maintain an action thereon in his own name against the obligor and his surety to recover damages for the injury suffered by him in consequence of the breach. The custodian of the bond shall furnish a certified copy thereof to the party for that purpose on payment of the legal fees therefore." Uniform Commercial Code (UCC)-2503; DC UCC 28-2503, Washington and Texas analogs thereto.

It is the act of "giving bond" which completes the contract between the court and Receiver for the protection of the court and interested persons and vests jurisdiction and control of property situated in different districts in the Receiver when the court requires a bond. Jurisdiction, control and right to possession does not vest until bond is given. The Court required a bond be given to the Court by filing with the Clerk, see OATR CR 8, p.2, para.2.

In the seminal case on the point of effecting receivership per 28 U.S.C. § 754, the court required a bond and the receivership could not take effect until bond was given, i.e., filed with the court. *Levin v. Garfinkle*, 514 F.Supp. 1160,

1166 (1981).

In the instant case, no bond was given by the Receiver and filed with the court. Interested persons are left without remedy when the bond is not filed, UCC-2503. Failure to comply with 28 U.S.C. § 754 means jurisdiction and control of property situated in any district different than the Northern District of Texas never vested in Lawrence Warfield as Receiver.

The seizure of Petitioners' property on March 25, 2002 by the Court through its Receiver in absence of bond violates the Constitutional immunities of Petitioners, as declared by this Court in *Hale v. Henkel,* 201 U.S. 43 (1906):

> "the individual may stand upon his Constitutional rights as a citizen... Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law." (Underline emphasis added.)

The Receiver was without any authority on March 25, 2002 and has remained without any authority as a Receiver

until present date for want of giving bond and the acts of Receiver are violation of the rights, freedoms[4] and immunities of Petitioners as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States and the allegation of a violation of a Constitutional right deprives a court of jurisdiction, *Jolly v. Coughlin,* 76 F3d 468, 482 (2nd Cir. 1996).

> "A lack of personal or subject matter jurisdiction exists when the court acted in some manner inconsistent with the constitutional due process, or otherwise acted beyond the powers granted to it under the law." *Cupp v. Murphy*, 412, U.S. 291, 294-96 (1973); and
>
> "Jurisdiction is fundamental – without it, courts cannot proceed at all in any case." *Ruhrgas v. Marathon Oil*, 526 U.S. 574 (1999); and

CONCLUSION

The petition for rehearing for a writ of certiorari should be granted.

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[4] Petitioners are incarcerated in California pursuant to a conviction garnered upon Receiver's testimony and evidence obtained March 25, 2002 and subsequent thereto in this case.

Dated: October 26, 2006

Respectfully submitted,

David Eugene Edwards,
Petitioner,
Appearing *pro se*
V68885
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P.O. Box 4000
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James Eugene Edwards,
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V68959
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P.O. Box 4000
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May 20, 2006

Kathy Thaut
4008 Brouse Blvd. West
University Place, WA 98466

Clerk of the Court
Supreme Court of the United States
Washington, DC 20543

RE: Filing Petition for Writ of Certiorari
Federal Express #851997876740

Dear Clerk,

Please find enclosed forty (40) copies of a Petition for Writ of Certiorari and Proof of Service as well as a check attached to this letter in the amount of $300 for David and James Edwards. David and James are my brother and father respectively and they have asked me to type up, duplicate, file and serve this writ for them as they are currently incarcerated in the State of California serving a sentence after conviction on a separate but related action to the civil judgment they are asking the Court to review. Their conviction is on appeal.

Because I have the ability to prepare forty copies and pay the filing fee it is not necessary for them to proceed *in forma pauperis* however I am not an attorney. Therefore I am unfamiliar with how to prepare this writ in booklet format pursuant to Rule 33.1. Due to the Petitioners appearing *pro se* I am hopeful it is sufficient to prepare the document pursuant to Rule 33.2.

If you find the enclosed documents are in a form that does not comply, pursuant to Rule 14.5, please return them to

me along with a copy of the letter indicating the deficiency as David and James do not have the ability to forward that many documents to me. The original letter can be sent directly to Petitioners if necessary or I can forward them a copy.

Thank you for your assistance with the filing of my family's Petition for Writ of Certiorari.

Sincerely,

RECEIVED
MAY 23 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

/s/ Kathy Thaut
Kathy Thaut
253-405-7128

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

July 20, 2006

Mr. David Eugene Edwards
Prisoner ID V68885
CSP Solano
Bldg. 1, #108
P.O. Box 4000
Vacaville, CA 95696

Re: David Edwards and James Edwards
v. Securities and Exchange Commission
No. 06-92

Dear Mr. Edwards:

The petition for a writ of certiorari in the above entitled case was filed on May 20, 2006 and placed on the docket July 20, 2006 as No. 06-92.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,
William K. Suter, Clerk
by
/s/ Melissa Blalock
Melissa Blalock
Case Analyst

Enclosures

App. 4

United States District Court
Northern District of Texas

Karen Mitchell
Clerk of the Court

1100 Commerce, Room 1452
Dallas, Texas 75242

Ms. Kathy Thaut
4008 Brouse Blvd. West
University Place, WA 98466

Subject: SEC v. Resource Development International, LLC, *et al*; 3:02cv605-R

Dear Ms. Thaut:

I am in receipt of your letter request for the clerk to respond to questions regarding bonds filed in the above case. Unfortunately, the time necessary to research your questions would be quite substantial and therefore your request does not fall into the scope of normal correspondence the clerk's office may quickly respond to.

Since your assistant visited our office this afternoon, and I helped her personally at our intake counter, I am happy to provide information regarding one filing in the case. She inquired specifically about Document No. 493, filed March 24, 2004, by Kelly M. Crawford, Charlene C. Koonce, and Stephen J. Womak, attorneys for the Receiver Lawrence J. Warfield. The document is titled "Notice of Bond of Receiver" and has a copy of a bond attached as Exhibit A. I have enclosed a copy of the filing in its entirety for your convenience.

Your assistant then request that I provide a certified statement that the bond attached to this document was copy and not the

original. Although the attachment does appear to be a copy, this is not a customary certification the Clerk's Office issues, and therefore I must refer you to the judiciary policy entitled "Testimony of Judiciary Personnel and Production of Judiciary Records in Legal Proceedings." This policy is available on this court's website at: http://www.txnd.uscourts.gov/rules/judiciary_policies.htm.

I regret I cannot assist you further at this time and hope you can appreciate the position the clerk's office is in with ever-dwindling resources.

Cordially,

/s/ Leigh Lyon
Leigh Lyon
Division Manager

Enclosure

cc: Senior U.S. District Judge Jerry Buchmeyer

AFFIDAVIT OF CYNTHIA FAYE SETSER

I, Cynthia Faye Setser, declare under penalty of perjury, 28 U.S.C. § 1746(1), under the laws of the United States of America, that the following is true and correct.

1. That, I have personal knowledge of each of the facts stated here; and

2. That, I am of lawful age and am competent to make this Affidavit; and

3. That, I am not a ward of, or under the guardianship of or conservatorship of another person or entity; and

4. That, this Affidavit is made as a matter of public record, in my own sovereign right, in sui juris capacity; and

5. That, I am a flesh-and-blood, natural born woman, one of the People and a member of the sovereign class, "We the People"; and

6. That, it is my information and belief that this first-class status enjoys the God-given, "unalienable rights" declared by the Declaration of Independence and guaranteed by the Constitution of the United States of America; and

7. That, on Thursday, September 7, 2006 I went to the Clerk's office of the United States District Court for the Northern District of Texas, Dallas Division located at 1100 Commerce Street, Room 1452, Dallas, Texas 75242; and

8. That, I did ask the Clerk for a certified copy of the original bond for Case No. 3:02-CV-0605-R; and

9. That, I did review several of the first pages of the docket for Case No. 3:02-CV-0605-R with the Clerk and there was no entry regarding bond; and

10. That, the Clerk did retrieve the Hartford Insurance file and brought it to the counter to look through discovered no bond for Case No. 3:02-CV-0605-R was in that file either; and

11. That, I with the assistance of the Leigh Lyon did find Docket #493 filed on March 24, 2004 – Notice of Bond; and

12. That, I did see that the Notice did state a true and correct **copy** of bond was attached as Exhibit A; and

13. That, I did request the Clerk sign and certify a statement that this was not an original bond on Case No. 3:02-CV-0605-R; and

14. That, the Clerk did inform me pursuant to the local rules she could not certify and provide me with such a statement; and

Further affiant sayeth naught.

Dated: September 7, 2006

/s/ Cynthia Faye Setser
Cynthia Faye Setser